

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: SCOTT WOODBURY

DATE: DECEMBER 28, 2006

SUBJECT: CASE NO. IPC-E-06-35 (Idaho Power)
FIRM ENERGY SALES AGREEMENT – BENNETT CREEK
WINDFARM LLC

On December 26, 2006, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a 20-year Firm Energy Sales Agreement between Idaho Power and Bennett Creek Windfarm LLC (Bennett Creek) dated December 20, 2006 (Agreement).

Background

On August 4, 2005, the Idaho Public Utilities Commission (Commission) in Case No. IPC-E-05-22, Order No. 29839, reduced the eligibility cap for avoided cost published rates for non-firm wind projects from 10 aMW to 100 kW, required individual negotiation for larger wind qualifying facilities (QFs), and established criteria for assessing QF contract entitlement. Reference Public Utility Regulatory Policies Act of 1978 (PURPA). By Commission Order No. 29872 the date for grandfathering eligibility was changed from July 1, 2004, the Notice of Petition date, to August 4, 2005, the date of Interlocutory Order No. 29839.

Agreement

The Bennett Creek facility will be located within Sections 22, 23, 26 (less southeast quarter) and 27, Township 4 S, Range 8 E, Boise Meridian, Elmore County, Idaho. Bennett Creek warrants the facility will be a qualified small power production facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). The facility will consist of 12 Vestas wind turbines with individual nameplate ratings of 1.65 MW for

each unit, for a total facility nameplate generator rating of 19.8 MW. The Agreement contains the non-levelized, published avoided cost rates set forth in Order No. 29391. Under normal and/or average operating conditions, Bennett Creek will not generate more than 10 aMW on a monthly basis. Energy delivered in excess of this monthly amount is Inadvertent Energy. Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount (20 MW) but will not purchase or pay for Inadvertent Energy. Agreement ¶ 7.6.

Based on Idaho Power Company's review of the information provided by the developer and in light of the procedure the Commission accepted in Cassia Wind Order No. 29954, Case No. IPC-E-05-35, Idaho Power has determined that it would be reasonable to grandfather the Bennett Creek facility based on satisfaction of the following criteria identified by the Commission in Order No. 29839, Case No. IPC-E-05-22

Primary criteria:

Prior to August 5, 2005, the developer had tendered a signed Firm Energy Sales Agreement to Idaho Power for the facility. This satisfies one of the two primary criteria for grandfathering.

Secondary criteria:

As of August 5, 2005, the facility did not have a signed contract for turbines. Idaho Power has reviewed the information provided by the developer and determined that this developer believed that obtaining financing was the highest priority on the critical path to project development and directed its resources to that goal rather than turbine acquisition. As a result, prior to August 4, 2005, the developer had entered into binding commitments to obtain financing. The Company has also confirmed that as of August 4, 2005, the facility had made substantial progress on the other secondary criteria, except for acquisition of turbines. As in the case of Cassia Wind, the developer has now obtained a firm commitment for turbines for the facility and filed the necessary applications for interconnection to satisfy the second primary criteria.

Idaho Power notes that there are three provisions the Commission should be aware of in its consideration of the Agreement:

1. In the negotiations of this project, Idaho Power and Bennett Creek agreed that an on-line date of December 2007 is crucial to demonstrate that the project was a viable project in August of 2005. This Agreement contains delay damage provisions that require the project pay Idaho Power damages if the project comes on-line after December 31 2007. The delay damages will accrue for a period of up to 90 days.

2. The Agreement contains the methodology for computing shortfall energy payments the Commission approved in the Firm Energy Sales Agreement between Idaho Power and Fossil Gulch Wind Park, LLC (Case No. IPC-E-04-19, Order No. 29630) and recently approved for Magic Wind Park in Order No. 30206 issued in Case No. IPC-E-06-26. Bennett Creek has voluntarily selected the Fossil Gulch Method. Use of the Fossil Gulch methodology is a negotiated term of the Agreement and is mutually acceptable to Idaho Power and Bennett Creek.
3. The Agreement reflects the changes to Idaho Power's Schedule 72 [Uniform Interconnection Agreement] approved in Order No. 30179 issued on November 17, 2006 in Case No. IPC-E-06-18.

Bennett Creek has selected March 31, 2007 as the Scheduled First Energy Date and December 31, 2007 as the Scheduled Operation Date

Section 24 of the Agreement provides that the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to Bennett Creek for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

COMMISSION DECISION

Staff recommends that the Application in Case No. IPC-E-06-35 be processed pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference IDAPA 31.01.01.201-204. Does the Commission agree that Modified Procedure is appropriate?

Scott Woodbury

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